APPENDIX A

SUPREME COURT OF SOUTH DAKOTA

334 N.W. 2d 24

LEAD-DEADWOOD SCHOOL DISTRICT NO. 40-1,
Plaintiff and Appellant,

v.

LAWRENCE COUNTY, and the Lawrence County Commissioners,
Defendants and Appellees.

No. 13982-r-JF.

Argued Feb. 16, 1983.
Decided May 18, 1983.

FOSHEIM, Chief Justice (on reassignment).

By Act of Congress, Lawrence County and the Lawrence County Commissioners (appellees) receive payment of federal money in lieu of taxes for federal entitlement lands located within Lawrence County. Act of October 20, 1976, Pub.L. No. 94-565, 90 Stat. 2662, 31 U.S.C. § 1601, et seq. These funds "may be used . . . for any governmental purpose." 31 U.S.C. § 1601.[1] SDCL 5-11-6 provides that "[t]he county auditor shall distribute federal and state payments in lieu of tax proceeds in the same manner as taxes are distributed." Under the Act, appellees have been the recipients of over $400,000. Under the

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[1] 31 U.S.C. § 1601: That effective for fiscal years beginning on and after October 1, 1976, the Secretary is authorized and directed to make payments on a fiscal year basis to each unit of local government in which entitlement lands (as defined in section 6) are located. Such payments may be used by such unit for any governmental purpose. The amount of such payments shall be computed as provided in section 2.

distribution in lieu of taxes ratio, Lead-Deadwood School District (appellant) would receive in excess of 60% of this payment. However, appellant has not shared in these funds because appellees refuse to honor the distribution provisions of SDCL 5-11-6. Appellant, in this mandamus action, seeks to compel appellees to distribute this money as prescribed by SDCL 5-11-6. Appellees' answer prayed for a denial of the writ, contending SDCL 5-11-6 is unconstitutional. The judgment of the trial court declared that SDCL 5-11-6 "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress under 31 U.S.C. § 1601 and as such [it] is unconstitutional and void under the supremacy clause of the federal and state constitutions."[2] The judgment also declared that appellees could "use all money received under the provisions of 31 U.S. Code § 1601 for any lawful purpose they see fit without regard to the provisions of SDCL 5-11-6." We reverse.

The only issue before us is whether SDCL 5-11-6 conflicts with 31 U.S.C. § 1601, and thus violates the supremacy clause.[3] Our inquiry is based on the assumption that absent the clear and manifest intent of Congress, the reserve powers of

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[2] U.S. Const. art. VI, cl. 2: This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

S.D. Const. art. VI, § 26: All political power is inherent in the people, and all free government is founded on their authority, and is instituted for their equal protection and benefit, and they have the right in lawful and constituted methods to alter or reform their forms of government in such manner as they may think proper. And the state of South Dakota is an inseparable part of the American Union and the Constitution of the United States is the supreme law of the land.

[3] In Lawrence County, S.D. v. State of S.D., 668 F.2d 27 (1982), the United States Court of Appeals for the Eighth Circuit held that

the States are not superseded by federal legislation. *Chicago & N.W. Tr. Co.* v. *Kalo Brick & Tile Co.*, 450 U.S. 311, 101 S.Ct. 1124, 67 L.Ed.2d 258 (1981); *Ray* v. *Atlantic Richfield Co.*, 435 U.S. 151, 98 S.Ct. 988, 55 L.Ed.2d 179 (1978); *Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 67 S.Ct. 1146, 91 L.Ed. 1447 (1947). However we recognize that

> [e]ven if Congress has not completely foreclosed state legislation in a particular area, a state statute is void to the extent that it actually conflicts with a valid federal statute. A conflict will be found 'where compliance with both federal and state regulations is a physical impossibility . . .,' or where the state 'law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'

Ray, supra, 435 U.S. at 158, 98 S.Ct. at 994 (citations omitted). We must determine what Congress said about the distribution of the money, what South Dakota provides on the subject, and whether there is a conflict. *Chicago & N.W. Tr. Co., supra.*

Appellees would have us launch this inquiry with an examination of the legislative history of the Act. However resort to legislative history is justified only when legislation is ambiguous or its literal meaning is absurd or unreasonable. Absent these circumstances we must give legislation its plain meaning. We cannot amend it to produce or avoid a particular result. *Matter of Sales Tax Refund Applications*, 298 N.W.2d 799 (S.D. 1980); *Elfring* v. *Paterson*, 66 S.D. 458, 285 N.W. 443 (1939). In our view, the scriveners of 31 U.S.C. § 1601 wrote it in plain, clear and rational language. We therefore need not look to legislative history. By the plain words of 31 U.S.C. § 1601, the federal money distributed to appellees "may be used by such unit for any governmental purpose." SDCL 5-11-6 requires distribution of these federal payments as taxes are distributed and thus school districts are recipients. Support of school districts is a governmental purpose. Appellees receive

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the facts in this case did not present a question of federal court jurisdiction.

the federal money in lieu of taxes that the entitlement land would be subject to if it were not owned by the federal government. One such tax is a school tax. We find no conflict between the two laws. If Congress intended to prohibit § 1601 funds from going to school districts, it could have done so by writing that prohibition into § 1601. However the only restriction placed on these funds is that they be used for a governmental purpose, which it is under SDCL 5-11-6.

Appellees argue conversely that had Congress intended § 1601 money to go to school districts, it would have so specified, as it did in 31 U.S.C. § 1603. We are not persuaded by this argument. Section 1603 is a special part of the Act which provides for *additional* payments to counties to compensate them for loss of real property taxes on certain lands acquired by the federal government after December 31, 1970. Payment under this section continues for only five years. This is a special measure to relieve the impact on local governments' budgets when land is suddenly removed from their tax roles. Payment under this program is based on one percent of the fair market value and is paid to counties with direction that the money be prorated to local units of government and school districts. While the payment would not necessarily provide dollar for dollar tax equivalency, it provides a measure of temporary revenue relief while these localities adjust to the tax loss. We do not believe that by earmarking school districts as recipients of § 1603 funds Congress thereby manifested its intent to exclude them from § 1601 funds. We reiterate the assumption that Congress does not intend to supersede state legislation absent a clear manifestation of such an intention.

We conclude that it is feasible for appellees to comply with 31 U.S.C. § 1601 and SDCL 5-11-6 because SDCL 5-11-6 is in harmony with, and not an obstacle to, the fulfillment of 31 U.S.C. § 1601.

The judgment is reversed with direction to issue the writ of mandamus.

WOLLMAN and MORGAN, J.J., concur.

DUNN and HENDERSON, J.J., dissent.

DUNN, Justice (dissenting).

I would first define the exact issue before this court. Section 1601 funds can be distributed "for any governmental purpose" by the local taxing authority (county) receiving the money. Financing school districts is a governmental purpose and the county could allot part or all of the section 1601 funds to the school district under the Act. The question presented here is: Can the county be *mandated* to pay over sixty percent of section 1601 funds to the school districts by a *state statute?*

Section 1601 provides that the money be paid over to the local taxing authority to be used "for any governmental purpose." Unlike section 1603 of this Act,* section 1601 does not provide for the distribution of these funds for school districts. At the very least, the silence in section 1601 on this point, in contrast to section 1603 express provision, creates an ambiguity as to how section 1601 funds are to be distributed. When we turn to the legislative history of the Act, it becomes most apparent that section 1601 funds were not intended to be earmarked by the State or any other unit of government except the *local taxing authority (county)* receiving the money.

> The Senate Report on the Act states:
> [T]he Committee believes that payments under [the Act] should go directly to units of local government since the local governments are the entities which assume the burden for the tax immunity of these funds. The Committee does not believe that these new payments should be *re-*

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* Section 1603 discusses payments for certain lands and provides for proportional payments of the funds to local governments and affected school districts. Section 1603 of the Act provides, in pertinent part:

> The counties, under guidelines established by the Secretary, shall distribute the payments on a proportional basis to those units of local government and affected school districts which have incurred losses of real property taxes due to the acquisition of lands or interests therein for addition to either such system.

> *stricted or earmarked for use for specific purposes* and the bill allows these payments to be used for any governmental purpose. S.Rep.No. 1262, 94th Cong., 2d Sess. 15 (1976), U.S. Code Cong. & Admin.News 1976, p. 5968, 5978. (Emphasis supplied.)

Later in the report the Committee was even more explicit as to the State's interference in distributing the funds:

> Many of the revenue sharing provisions permit the States to make decisions on how the funds will be distributed. In far too many States, the result has been that the funds are either kept at the State level and not distributed to local governments at all or are parcelled out in a manner which provides shares to local governments other than those in which the Federal lands are situated and where the impacts of the revenue and fee generating activities are felt. S.Rep. No. 1262, 94th Cong., 2d Sess. 9 (1976), U.S. Code Cong. & Admin.News 1976, p. 5972.

This statement makes it abundantly clear that Congress was directing the states to keep their noses out of the manner in which a county would distribute these funds. I believe Congress intended the county be vested with total discretion in distributing section 1601 funds. While the county may choose to distribute part of the section 1601 funds to the school district, *see Kendall* v. *Towns County*, 146 Ga.App. 760, 247 S.E.2d 577 (1978), I do not believe the county can be forced to do so as contemplated by SDCL 5-11-6. By the passage of SDCL 5-11-6, South Dakota was undermining the very intent and purpose of the Act by earmarking sixty percent of the funds for school districts.

The United States Supreme Court noted in *Chicago & N.W. Tr. Co.* v. *Kalo Brick and Tile Co.*, 450 U.S. 311, 317, 101 S.Ct. 1124, 1130, 67 L.Ed.2d 258, 265 (1981):

> [W]hen Congress has chosen to legislate pursuant to its constitutional powers, then a court must find local law preempted by federal regulation whenever the "challenged state statute 'stands as an obstacle to the accom-

> plishment and execution of the full purposes and objectives of Congress.' "

Since SDCL 5-11-6 undermined the accomplishment and execution of the full purposes and objectives of Congress by earmarking funds for school districts, I would find SDCL 5-11-6 unconstitutional as far as section 1601 payments are concerned. I would affirm.

I am authorized to state that Justice HENDERSON joins in this dissent.

APPENDIX B

IN CIRCUIT COURT
EIGHTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA)
) S.S.
COUNTY OF LAWRENCE)

LEAD-DEADWOOD SCHOOL DISTRICT No. 40-1,
Plaintiff,

v.

LAWRENCE COUNTY, and the
LAWRENCE COUNTY COMMISSIONERS,
Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled matter having come before this Court on Briefs submitted by counsel of record, and the Court having examined the proofs in support thereof, the Court finds the fact as follows:

FINDINGS OF FACT

I.

That Plaintiff has sought a Writ of Mandamus for immediate disbursal of monies received by Defendant under the provisions of 31 U.S. Code 1601.

II.

That Defendants have answered and counterclaimed Plaintiff's Complaint and sought a declaration that SDCL 5-11-6 is unconstitutional in that the same is in conflict with 31 U.S.C. 1601 et seq.

III.

That the attorney General of the State of South Dakota has been notified pursuant to SDCL 21-24-8 of the constitutional attack on the statute.

IV.

That Lawrence County is a recipient county for the receipt of monies under Public Law 94-565 (31 U.S.C. Sec. 1601-1607).

V.

That Lawrence County received during the calendar year 1979 the sum of $134,627.00 under Public Law 94-565. Lawrence County received during the calendar year 1980 the sum of $110,370.00 under Public Law 94-565. Lawrence County received further payment in 1981 the sum of which is not known, under Public Law 94-565.

VI.

That Lawrence County has retained all of said sums of money and has not disbursed any monies paid under Public Law 94-565 to the above named Plaintiff under SDCL 5-11-6.

VII.

That Public Law 94-565 (31 U.S.C. 1601-1607) was duly passed by the United States Congress October 10, 1976.

VIII.

That SDCL 5-11-6, as amended, was duly passed by the South Dakota Legislature and was effective July 1, 1979.

IX.

That SDCL mandates that a portion of revenues received by Lawrence County be disbursed by said County into Meade School District 46-1 in Meade County, South Dakota.

X.

That SDCL 5-11-6 would result in excess of 60% of monies received by Lawrence County being disbursed to various school districts including Plaintiff.

CONCLUSIONS OF LAW

I.

That the Court has jurisdiction of the matter.

II.

That SDCL 5-11-6 is in conflict with and stands as an obstacle to the accomplishment and the execution of the full purposes and objectives of Congress and as such is unconstitutional and void under the supremacy clause of the federal and state constitutions.

LET JUDGMENT BE ENTERED ACCORDINGLY

Dated this 27th day of September, 1982.

BY THE COURT:

/s/ Scott C. Moses

SCOTT C. MOSES
Presiding Judge
Eighth Judicial Circuit Court

(SEAL)

ATTEST:

Clerk of Courts
Lawrence County, South Dakota

IN CIRCUIT COURT
EIGHTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA)
)
COUNTY OF LAWRENCE) S.S.

LEAD-DEADWOOD SCHOOL DISTRICT No. 40-1,
Plaintiff,

v.

LAWRENCE COUNTY, and the
LAWRENCE COUNTY COMMISSIONERS,
Defendants.

JUDGMENT

The above entitled matter having come on before this Court, the Honorable Scott C. Moses presiding, on Stipulation of Fact, and the parties having briefed the same, and the Court having entered it's Memorandum Opinion, dated September 9, 1982, and Findings of Fact and Conclusions of Law having been submitted to this Court and signed by this Court on this date,

IT IS HEREIN THE JUDGMENT OF THIS COURT, That SDCL 5-11-6 stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress under 31 U.S.C. 1601 and as such that SDCL 5-11-6 is unconstitutional and void under the supremacy clause of the federal and state constitutions.

IT IS THE FURTHER JUDGMENT OF THIS COURT, That Lawrence County is herein permitted to use all money received under the provisions of 31 U.S. Code 1601 for any

lawful purpose they see fit without regard to the provisions of SDCL 5-11-6.

Dated this 27th day of September, 1982.

BY THE COURT:

/s/ Scott C. Moses

SCOTT C. MOSES
Presiding Judge
Eighth Judicial Circuit Court

(SEAL)

ATTEST:

/s/ B. C. Edstrom

B. C. EDSTROM
Clerk of Courts
Lawrence County, South Dakota

By:

APPENDIX C

IN THE SUPREME COURT OF THE
STATE OF SOUTH DAKOTA

Case No. 13982

LEAD-DEADWOOD SCHOOL DISTRICT, No. 40-1,
Plaintiff and Appellant,

v.

LAWRENCE COUNTY, and the
LAWRENCE COUNTY COMMISSIONERS,
Defendants and Appellees.

NOTICE OF APPEAL

Please take notice that Lawrence County and the Lawrence County Commissioners hereby appeal the decision rendered by this Court on May 18, 1983 to the Supreme Court of the United States pursuant to 28 U.S.C. § 1257(2). Dated this 18th day of July, 1983.

/s/ Alan Raywid

ALAN RAYWID

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SUPREME COURT
STATE OF SOUTH DAKOTA
Original was FILED
JUL 22 1983
Gloria A. Engel
Clerk

APPENDIX D

LEGISLATIVE HISTORY OF THE PAYMENTS IN LIEU OF TAXES ACT

I. Committee Reports

A. Excerpts from S.Rep. No. 94-1262, 94th Cong., 2d Sess. *reprinted in* 1976 U.S. Code Cong. & Ad. News 5968 ("S.Rep. No. 1262") accompanying and recommending passage of the Payments In Lieu of Taxes Act.

Introduction And Background On The Policy Supporting Payments In Lieu Of Taxes To Local Governments, S.Rep. No. 1262 at 5-6 (footnote omitted):

. . . [T]he Commission also recommended that, if the historic policy of disposal of the public lands is to be reversed and those lands are to be retained in Federal ownership, "it is the obligation of the United States to make certain that the burden of that policy is spread among all the people of the United States and is not borne only by those states and goverments in whose area the lands are located. Therefore, the Federal Government should make payments to compensate state and local governments for the tax immunity of Federal lands."

H.R. 9719, as reported, seeks to translate the basic principle of this PLLRC recommendation into law. Its purpose is to recognize the burden imposed by the tax immunity of Federal lands by providing minimum Federal payments to units of local government within the boundaries of which these lands lie. The Act establishes a formula for determining such payments which sets both a floor and a ceiling thereon. The formula is a relatively simple one which can be employed with a minimum of administrative costs.

Background

1. Defects in Existing Statutes Providing for the Sharing of Revenues and Fees from Public Lands with State and Local Governments.

The Federal Government owns over 761 million acres of land within the United States, of which some 705 million acres remain from the original public domain and 56 million have been acquired from private or other public owners. These vast Federal landholdings comprise approximately one third of all the land in this country. Although the greatest portion of these lands is situated in the eleven coterminous Western states and Alaska, 40 states and approximately 1000 counties have federally owned tax exempt land within their boundaries.

* * *

Defects in Current Federal Payments Schemes To State Governments, S.Rep. No. 1262 at 7-10:

In this Congress, the Senate has made numerous efforts to amend [ ] statutory provisions to increase the amount of, and render more useful, the payments to State and local governments . . .

No reform of these statutory provisions, however, will cure the eight basic defects of this Federal lands revenue and fee sharing system:

1. Payments under this system are made only for those lands which have revenue or permit fee generating activities occurring on them . . .

2. Even once a level of production is established, State and local governments cannot budget public lands revenue and fee sharing funds with any degree of certainty, because management decisions of the various Federal land management agencies can often quite suddenly reduce or eliminate the revenue or fee generating activities on the public lands within those State or local governments' jurisdictions. . . .

3. Certain Federal lands . . . are prohibited by law from supporting any of the activities which generate revenues or fees which are shared with State and local governments, and other lands may support only one or a few of those activities. . . . These lands attract thousands of visitors each year, yet the intangible economic benefits to the local economy from tourist related activities in and adjacent to these lands do not usually accrue to the local taxing authority. Income and sales taxes are sources of funds for the State treasury, yet the local governments are the entities which must provide for law enforcement, road maintenance, hospitals, and other services directly and indirectly related to the activities on these lands.

4. The percentages of revenues and fees shared under the various provisions of law are not based on any rational criteria. As a result they vary from 5 to 90 percent, depending on the program and agency involved.

5. Even in the few instances when a local government's share of the various revenues and fees is sufficient to meet service demands arising from the Federal lands and to approximate the loss of ad valorem tax revenues which would otherwise be generated by those lands, too many of the revenue sharing provisions restrict the use of funds to only a few governmental services — most often the construction and maintenance of roads and schools. Yet, local governments are called upon to provide many other services to the Federal lands or as a direct or indirect result of activities on the Federal lands. These services include law enforcement; search, rescue and emergency; public health; sewage disposal; library; hospital; recreation; and other general local government services. It is only the most fortunate of local governments which is able to juggle its budget to make use of those earmarked funds in a manner which will accurately correspond to its community's service and facility needs.

6. *Many of the revenue sharing provisions permit the States to make the decisions on how the funds will be distributed. In far too many States, the result has been that the*

funds are either kept at the State level and not distributed to local governments at all or are parcelled out in a manner which provides shares to local governments other than those in which the Federal lands are situated and where the impacts of the revenue and fee generated activities are felt . . .

8. Most importantly, the total of funds received by most local governments under the Federal lands revenue and fee sharing statutes seldom approaches (i) the level of revenues which would be collected by ad valorem taxes were these lands private lands or (ii) the level of expenditures of the local governments to construct facilities and provide services required by activities on the Federal lands or by activities on private lands which have been generated by the Federal lands activities . . . (emphasis supplied)

* * *

Burdens Of Providing Services for Federal Lands, S.Rep. No. 1262 at 13-14:

The designation of lands as national parks and wilderness areas precludes any mineral or timber revenues, yet the tax immunity of these lands is no less of a burden for local jurisdictions than multiple-use national forest and BLM lands. States and local governments do not now receive any compensation for the tax immunity of these lands other than the unquantified and indirect benefits from visitors and tourists. In numerous hearings before the Committee local and State officials have testified to the increasing fiscal demands for governmental services in these areas. While the Committee does not discount the fact that some benefits accrue to localities where national parks, monuments and wilderness areas are located, the revenues produced for the local community do not match the burdens of providing additional police and fire protection, search and rescue service, medical and hospital facilities, and other governmental responsibilities required in and around these areas because of the influx of visitors . . .

Federal lands eligible for payments in lieu of taxes were designated "entitlement lands" in section 6 of the bill because they are believed to have the greatest impact on the fiscal health of units of local government and create the vast majority of the problems related to the tax immunity of Federal lands.

* * *

Intended Lack Of Restrictions On Payments Directly To Units Of Local Government, S.Rep. No. 1262 at 15:

H.R. 9719 requires that any payments under the ten statutes set forth in section 4 which are actually received by a unit of local government are to be deducted from H.R. 9719's payments. In most cases only a small percentage of mineral leasing revenues produced within a county are returned to that county by the State. Accordingly, to preclude penalizing these counties, H.R. 9719 provides that only those monies actually received by local government should be deducted.

Moreover, the Committee believes that payments under H.R. 9719 should go directly to units of local government since the local governments are the entities which assume the burden for the tax immunity of these lands. The Committee does not believe these new payments should be restricted or earmarked for use for specific purposes and the bill allows these payments to be used for any governmental purpose.

* * *

Policy Behind Section Three Payments, S.Rep. No. 1262 at 18:

Payments authorized by this subsection will be made to counties, with the counties responsible for distributing the payments on a proportional basis to those units of local government and affected school districts which have incurred losses of real property taxes due to the acquisition of these lands or interests by the Federal government. The Secretary would establish guidelines for this distribution, but the basic determination would be left to the counties—and thus to local rather than Federal control.

B. H.R.Rep. No. 1106, 94th Cong., 2d Sess. ("H.R.Rep. No. 1106") accompanying and recommending passage of the Payments In Lieu of Taxes Act.

Purpose and Policy Supporting Federal Payments In Lieu Of Taxes, H.R.Rep. No. 1106 at 4-5:

. . . [I]f the historic policy of disposal of the lands is to be reversed, and thus forever keep such lands off the tax rolls of the States and counties, a system of payments in lieu of taxes should be established to compensate these units of government for the burdens resulting from the tax immunity of the public lands. In other words, if the lands were to be retained for all the people of the United States, the expense of retaining them ought to be borne by all of the citizens rather than only by those who live within the boundaries of the States and counties where the public lands lie.

. . . [The] purpose [of H.R. 9719] is to recognize the burden imposed by the tax immunity of Federal lands by providing minimum Federal payments to units of local government in which these lands lie. The bill establishes a formula for payments and provides a floor and a ceiling for payments to such units of government based on the population and number of acres of lands eligible under the basic philosophy of the bill.

* * *

Inadequacy of Current Provisions To Reimburse Local Governments From The Costs of Providing Services For Federal Lands, H.R. Rep. No. 1106 at 5-7:

Over the years, the Congress has established programs to partially compenate states and local governments for the impact of Federal ownership, but in most cases the revenues that they receive do not approach what would be received from property taxes if these lands were in private ownership . . .

Most of the present payments bear no relationship to the direct and indirect burdens imposed on local governments by the presence and/or use of these Federal lands. Nor are the

revenues a unit of government receives directly related to the total number of acres of Federal land.

Moreover, these public land payments have not kept pace with the increasing demands for governmental services. . . .

In addition, there are currently no payments to states and local governments for the 24.8 million acres in the National Park System or the 9.6 million acre National Wilderness System. These lands attract thousands of visitors each year, yet the intangible economic benefits to the local economy from tourist related activities in and adjacent to these lands do not usually accrue to the local taxing authority. Income and sales taxes are sources of funds for the state treasury, yet it is the local governments that must provide for law enforcement, road maintenance, hospitals, and other services directly and indirectly related to the activity on these lands. . . .

The present system of shared receipts bears no relationship to the direct or indirect burdens placed on local governments by the presence of Federal lands. Most current payments are restricted to use for construction and maintenance of schools or roads. Yet, local governments provide many additional services such as law enforcement, search, rescue and emergency services, public health, sewage disposal, library, hospital, recreation, and other general local government responsibilities. . . .

The situation is similar in county after county across the country: the Federal government as landowner does not pay what would be required if this land was on the tax rolls; nor does it adequately compensate counties for the burdens associated with the maintenance of local government services on these lands.

* * *

The Inequities of Restrictions on Current Federal Payments To Local Governments, H.R. Rep. No. 1106 at 8-10:

Under these statutes, anywhere from 5 percent to 90 percent of revenue produced is returned to the States and counties, earmarked for schools, roads or other specific purposes. Most of these statutes were enacted before or without regard to local government tax structures and do not reflect current actual revenue needs or tax losses . . .

The Committee believes, however, that even these counties do not receive payments which are equal to tax equivalency or which reflect the burden of providing services. Moreover, these payments are restricted by statute to use for schools and roads at a time when demands for innumerable other governmental services continue to increase—services and responsibilities not generally provided by local governments when these statutes were enacted . . .

The designation of lands as national parks and wilderness areas precludes any mineral, grazing or timber revenues, yet the tax immunity of these lands is no less of a burden for local jurisdictions than national forests or BLM land. States and local government do not now receive any compensation for the tax immunity of these lands other than the unquantified and indirect benefits from visitors and tourists. Testimony from local and State officials documented the increasing fiscal demands for governmental services in these areas. While the Committee does not discount the fact that some benefits accrue to localities where national parks, monuments and wilderness areas are located, the revenue produced for the local community does not match the burdens of providing additional police and fire protection, search and rescue service, medical and hospital facilities, and other governmental responsibilities required in and around these areas because of the influx of visitors.

* * *

The Purpose and Policy Of Section Three Payments, H.R. Rep. No. 1106 at 11:

To ease the impact of such a Federal acquisition, the Committee approved an amendment to reduce the burden imposed by the sudden loss of this tax base by compensating units of

local government for a five-year period at the rate of 1 percent of the fair market value of the acquired lands. . . .

The intent of section 3 is to equalize the fiscal burden caused by the acquisition of private lands for new parks and wilderness areas and to reduce the immediate and direct financial impact on the affected local jurisdiction. This burden is often cited as the most important source of opposition to the establishment of new parks where land, however valuable to our national heritage, is now on the tax rolls and producing revenue.

* * *

The Rationale For Directing Payments To Local Governments And Not States Or Special Purpose Districts, H.R. Rep. No. 1106 at 11-12:

Under existing programs for sharing public land revenues, the Federal government returns a percentage of revenues to the States, which are then distributed to state and local governments according to State law and the requirements of the Federal statutes . . .

. . . The Committee realized that in most cases only a small percentage of mineral leasing revenues produced within a county are returned to that county by the State, and to preclude penalizing these counties the Committee determined that only those monies actually received by the local government should be deducted.

Moreover, the Committee believes that payments under H.R. 9719 should go directly to units of local government since it is the local governments that assume the burden for the tax immunity of these lands. The Committee does not believe these new payments should be restricted or earmarked for use for specific purposes and the bill allows these payments to be used for any governmental purpose.

It is the general purpose local governments which are the taxing authorities and the units responsible for providing services and which should be the recipients of these payments . . .

The definition of "unit of local government" assures that counties, cities, towns, and townships, existing boroughs in Alaska, parishes and other units of local government that have general governmental responsibilities, as opposed to single purpose functions such as school districts and water districts, will be the recipients of these payments.

II. Congressional Debates

Selected excerpts from the debate and statements of members of the House of Representatives upon consideration and passage of the Payments in Lieu of Taxes Act, H.R. 9719, appearing in 122 Cong. Rec. 25741-78 (August 5, 1976). All of the Congressmen, including the Bill's sponsors, commented on the current inequitable situation facing local governments with federal tax-exempt lands in their boundaries.

Statement of Congressman Quillen, on the background of the Act and lack of restriction on local governments' discretion, 122 Cong. Rec. 25742:

The Federal Government owns over 760 million acres of the 2.2 billion acres in the United States. These Federal holdings amount to approximately one-third of all our land, and are contained in over 1,000 counties, . . .

* * *

The tax immunity of these Federal lands substantially reduces the tax base of these counties, and other affected counties throughout the country, and places an unfair tax burden on the local taxpayers. Over the years, the Congress has established various programs to partially compensate States and local governments for the tax loss impact of Federal land ownership within their boundaries.

* * *

The present system of payments, most of which go to the State governments, bears no relationship to the direct and indirect financial burdens placed on the local governments by

the presence of these Federal lands. The local governments must provide the full range of community services including road maintenance, law enforcement, court systems, fire protection, rescue operations, health, welfare, and other necessary services—despite the fact that large areas of these counties are Federal land and are therefore removed from the local tax rolls.

* * *

H.R. 9719 provides that the payments shall go directly to the units of local government. The funds are not earmarked for specific purposes such as roads or schools. Rather, the local governments are given the discretion to use these monies as they determine, which is as it should be.

Statement of Congressman Weaver, noting the unique burdens associated with federal land and the inequities of prior payment systems, 122 Cong. Rec. 25747:

Over the years Congress has established a number of programs which partially compensate for the impact of Federal ownership by paying a percentage of the revenue derived from the public lands but these forest receipts, grazing fees, and other revenues, are considerably less than the revenues these lands would provide to the counties if on the tax rolls.

* * *

Of the more than $750 million in receipts annually from these lands—and I point out these lands now give to the Federal Government $750 million annually in various production receipts—they return only $115 million to the local governments in these sharing formulas. These are earmarked for roads and schools, not to the counties directly. These payments do not bear any relationship to the direct and indirect burdens imposed on local governments to provide a host of governmental services to these lands, such as the ones I have mentioned including fire protection, sewage treatment, the pickup of litter, courts, health, search and rescue, and law enforcement, to name a few. The existing system is extremely inequitable

and the revenue fluctuates from year to year depending entirely on production. H.R. 9719 would provide a predictable level of payments which does not now exist that the counties could rely on.

Statement of Congressman Jeffords, noting the general scheme of payments to local governments, 122 Cong. Rec. 25748:

[The Payments in Lieu of Taxes Act] . . . addresses a problem that has plagued substantial portions of almost all our States—that of the inadequate compensation local units of government receive for certain Federal lands located within their boundaries. Tax-exempt tracts managed by the Forest Service, Bureau of Land Management, and National Park Service have long placed severe strains on the property tax base of many counties and towns.

* * *

I feel that H.R. 9719 represents a significant move toward providing equitable levels of payment to local governments strapped by the tax-exempt status of Federal lands within their boundaries. Instead of basing Federal payments on the vagaries of the timber market, it establishes a uniform pricing mechanism providing a stable and adequate level of return. The bill provides these monies

Statement of Congressman Evans, noting the costs of services for federal lands and lack of restrictions on use of payments under the Act, 122 Cong. Rec. 25749-50:

The current Public land sharing formulas for timber, minerals, grazing leases, et cetera, do not provide sufficient funds to local governments.

The local governments have to provide services such as road maintenance, fire protection, law enforcement, waste disposal, health and rescue operations, courts, et cetera, for the public lands and activities on the lands, thereby placing an unfair burden on the taxpayers of the counties in which these lands are held. Of more than $750 million in receipts annually

from these lands only about $110 million is returned to local governments which is principally earmarked for roads and schools.

* * *

Under H.R. 9719, a local government would receive the greater amount of either: First, 75 cents per acre of entitlement lands; or second, 10 cents per acre in addition to current payments. These payments would be limited to $50 per capita for counties under 5,000 population with a sliding scale of $20 per capita at 50,000 population or above. The payments can be used for any local government purpose—not restricted to roads and schools.

Statement of Congressman Baucus, stressing the lack of restriction on counties' use of payments under the Act, 122 Cong. Rec. 25750:

There are approximately 1,000 counties in over 40 States which hold tax-exempt lands. This federally owned land contributes to operating costs for local governments. Adequate police and fire protection, medical care, ambulance service and road maintenance must be provided by the counties for people using these public lands. Yet, these counties cannot increase taxes on these lands to provide these services because these lands are tax exempt.

The current formula payments from public lands do not accomplish tax equity. Current payments are restricted to roads and schools only and current payments are based entirely on the amount of production of the public lands. Therefore, many public land based counties receive virtually no payments.

* * *

This bill treats all counties fairly. The payment formula is simple and easy to understand. It does not change existing law in any way. It does not jeopardize any Federal payments now received by counties. And payments can be used by counties for any public purpose.

Statement of Congressman Alexander, noting the inequities in prior payment plans, 122 Cong. Rec. 25752:

. . . [A]s a sponsor of H.R. 9719, I rise in support of the Payment In Lieu Of Taxes Act, a bill which I believe will give rightful compensation to those counties in this Nation that suffer from a loss of revenues due to federally owned, and therefore non-taxable, lands within their boundaries.

* * *

The flaws in the current compensation programs are many. Most of the present payments bear no relationship to the direct and indirect burdens placed on local governments by the presence and use of these Federal lands. Nor are the revenues that a local unit of government receives directly related to the total number of acres of Federal land. And, probably most importantly to the people who reside within these local jurisdictions, these public land payments have not kept pace with the demand for Government services.

While there are programs for partial compensation to State and local governments for these lands, there are currently no payments to States and local governments for the 24.8 million acres in the national park system or the 9.6 acre national wilderness system. These lands attract scores of visitors, but the economic benefits to the local economy rarely accrue to the local taxing authority. Income and sale taxes accrue to the State coffers, yet it is the local unit of government that must provide law enforcement, road maintenance, health and other services.

Statement of Congressman Johnson, noting the special costs to local governments of supporting federal lands, 122 Cong. Rec. 25753:

. . . The counties that really need the funding are counties that have a lack of sewer facilities, water facilities; they have high road expenses during the winter and during the summer

time when they have a high number of tourists and we seem to be getting more tourists all the time.

* * *

This is a bill that will provide some help and some compensation for the inevitable expense that arises out of trying to maintain that population that keeps coming through in these concentrated periods of time. It is something which is justified.

Statement of Congressman McCormack, on the inequities of the prior system of payments and lack of restrictions on those under the Act, 122 Cong. Rec. 25754:

. . . These recreation and wilderness areas were created by Federal statute—for the benefit of all the people of this Nation, but at the expense of the local government and people.

* * *

Many counties now obtain some returns from these leases, based on a percentage of production, for expenditure on schools and roads. The Payments-In-Lieu of Taxes Act will now assure the counties a definite amount that will not fluctuate with lease production abilities and will not be specifically earmarked for schools and roads but can be expended on the basis of priority need so that each county can now budget accurately, and the citizens of the county need not bear a disproportionate share of the tax burden for land intended for the use and enjoyment by all Americans.

Statement of Congressman McFall, on the special costs of maintaining federal lands and need for unrestricted use of payments by local government, 122 Cong. Rec. 25756:

The Federal Government owns approximately 800 million acres of the land in our Nation—approximately one-third of the total area of the United States. These lands, because of the sovereignty of the Federal Government, are exempt from State and local taxes.

Although the Congress has enacted various laws providing for some compensation to State and local governments for these lands, there remains a burden upon local governments to provide services—especially in recreational areas—for the millions of people who flock there.

* * *

Some money is returned to the counties from sales of timber in national forests. However, this return is based on net receipts and severe fluctuations in the net make sound county budgeting almost impossible. (Net receipts are limited for school and road budgets under a 50-50 split formula.)

* * *

As host counties for this vast playground, we are increasingly burdened with policing costs as crime and vandalism spreads. We are also burdened with the costs of handling garbage and litter for visitors as well as our own citizens in compliance with State and Federal mandates at great costs to our taxpayers.

* * *

H.R. 9719 will help to meet the burden these local governments bear for having these large tracts of Federal lands, and better enable them to meet their general government needs as well as those generated by the millions of people who come to these areas each year for recreation.

* * *

Statement of Congressman Seiberling, on the meaning of Section Three of the Act providing special additional compensation to school districts, 122 Cong. Rec. 27557-58:

Mr. Chairman, this bill would provide an equitable and easily administered means of partially compensating counties and local governments for the tax immunity of federally owned natural resource lands within their boundaries.

As the author of section 3 of the bill, it was my intention that school districts which suffer such losses would qualify for payments along with other units of local government. However, it has come to my attention that, because of the way the provision was drafted, it might be argued that a school district is not a unit of local government.

In order to eliminate any doubt about it, at the appropriate time I intend to offer a technical amendment to H.R. 9719, to expressly include school districts as qualifying for payments under section 3. The amendment would not add one cent to the cost of the provision, since the total amount would remain the same—1 percent of the fair market value of the acquired land for 5 years. The payments would still go to the counties or other comparable taxing unit, for distribution on a proportional basis to the affected local unit of government and school districts.

* * *

While the purpose of section 3 is to cushion the effect on communities of sudden tax losses, it must be recognized that some added expenses for localities do continue indefinitely—and usually increase with increased tourism. The local governments must maintain their roads to carry increased traffic going to and from the parks. They must also provide for added law enforcement, hospitals, and other services which are related, directly or indirectly, to activity in the parks.

Furthermore, while local businesses may indeed gain added income from tourists, often the local governments do not gain greatly increased revenues from sales and income taxes which go to the treasuries of the States.

Statement of Congressman Fithian, on lack of restriction on the use of payments under the Act, 122 Cong. Rec. 25760:

. . . [T]here is presently no method of reimbursement to communities for wilderness areas and other non-revenue-producing lands that can, and sometimes do, take quite a chunk out of a local tax base.

* * *

This bill authorizes the Secretary of the Interior to compensate localities for land in their tax jurisdictions included in national parks. If two taxing jurisdictions overlap, the smaller unit of government would receive the funds. Funds may be used for any governmental purpose, without qualification.

Statement of Congressman Robinson, on reimbursing local governments, 122 Cong. Rec. 25762:

I think it particularly desirable that this bill emphasizes payments to units of local governments, because it is their revenue base which is affected most directly, and adversely, by the exemption of the Federal lands from real property taxes.

Statement of Congressman Clausen, noting the lack of compensation to local governments by states for indirect income received from national park lands, 122 Cong. Rec. 25772-73:

It is true that in some cases national parks are a "gold mine" to the surrounding communities. However in many cases the opposite is true.

Visitors and tourists provide some benefits but they are indirect and may vary from year to year. For example, increased income from tourist-related businesses may result in added tax revenue to the State in the form of sales tax and income tax revenues but does not compensate our local jurisdictions for the loss of property taxes.

At the same time, the administration of the parks require that our local communities provide services such as police and fire protection, search and rescue service, medical and hospital facilities. The same is true of potential court costs associated with visitors to the public lands who get into trouble. The cost of providing these services is a tremendous burden on our local areas and they receive nothing in the way of compensation from the Federal Government. Our bill will correct this inequity by including parks among those lands to be considered for payment-in-lieu-of-taxes.

APPENDIX E

Legislative History of 1983 Amendments To Payments In Lieu Of Taxes Act.

I. Text Of Amendment

H.R. 3069, 98th Cong., 1st Sess., Amending 31 U.S.C. § 6901(2).

CHAPTER VII
DEPARTMENT OF THE INTERIOR
Bureau of Land Management

PAYMENTS IN LIEU OF TAXES—*(Amendment No. 88)*

Notwithstanding any other provision of law: (1) 31 U.S.C. 6901(2) is amended to read as follows:

"(2) 'unit of general local government' means:

(A) a county (or parish), township, borough existing in Alaska on October 20, 1976, or city where the city is independent of any other unit of general local government, that (i) is within the class or classes of such political subdivisions in a State that the Secretary of the Interior, in his discretion, determines to be the principal provider or providers of governmental services within the State; and (ii) is a unit of general government as determined by the Secretary of the Interior on the basis of the same principles as were used on January 1, 1983, by the Secretary of Commerce for general statistical purposes. The term 'governmental services' includes, but is not limited to, those services that relate to public safety, environment, housing, social services, transportation, and governmental administration;

(B) the District of Columbia;
(C) the Commonwealth of Puerto Rico;
(D) Guam; and
(E) the Virgin Islands."

(2) Section 6903(a)(4) is repealed.

(3) The United States shall not be subject to any cause of action or any liability for distribution of payments made

prior to January 1, 1983, under the Act of October 20, 1976 (90 Stat. 2662), as amended, or regulations pursuant thereto . . .

II. Congressional Debate

Statement of Senator Durenberger on his amendment to H.R. 3069 adding 31 U.S.C. § 6907, stating its purpose to correct the decision in *Mead Township* v. *Andrus*, 695 F.2d 1006 (6th Cir. 1982) and that special districts are not eligible to receive payments under Section One of the Act, appearing in 129 Cong. Rec. S8444 (daily ed. June 15, 1983) (emphasis supplied):

* * *

Mr. President, chapter VII of this bill contains language reported out of the Energy and Natural Resources Committee in H.R. 1213. It amends the Payments In Lieu Of Taxes Act of 1976 which compensates local governments for the presence of Federal tax exempt lands within their boundaries. The effect of the language is to set aside a recent U.S. circuit court of appeals decision, Meade Township, and others against Andrus in which the court held the Secretary of Interior had exceeded his authority under the act in allocating payments in lieu of taxes to local governments.

The provision of H.R. 3069 at issue here would permit the Secretary of Interior to continue to allocate funds as he has in the past. The report accompanying H.R. 1213 explains the committee's opinion that this change is necessary to ensure the timely payment of entitlements under the act.

The amendment I am proposing is very simple. It would permit the payment in lieu of taxes funds to continue to go out exactly as they have since the beginning of the program with one slight change. The amendment would allow a State to pass a law, if it so desired, to reallocate the funds within the unit of government receiving the funds between that unit and other units of local government contained within it. If the State decides to reallocate the funds, all of the funds reallocated must

remain within the boundaries of the unit of government to which the Secretary originally made the allocation.

* * *

Mr. President, although there is not a lot of money at stake here, this is the essence of the New Federalism debate. At issue here is a dispute between two types of local governments in a few States over who provides the majority of the services. Congress should not be in the businss of settling these disputes. We have an obligation to see to it that money is provided in compensation for the presence of tax exempt Federal property. It is ridiculous for Congress to attempt to tailor a Federal program to take account the thousands of idiosyncratic ways local governments throughout the Nation provide public services. But, Mr. President, it is just as ridiculous for Congress to pretend these differences do not exist and to apply a uniform national standard simply for the sake of bureaucratic expediency.

Let me reiterate that if the State does not pass a law reallocating funds, the Secretary of Interior's allocation will stand. And if the State decides in its wisdom to reallocate the money, it must be redistributed only to local governments within the boundaries of the original recipient. *Furthermore, only general purpose local governments as defined by the Bureau of the Census will be eligible to receive funds under the reallocation—that is, only those jurisdictions currently eligible to receive general revenue sharing. Special districts will not be eligible unless the eligible jurisdictions negotiate an agreement with such districts as is currently the case in a few instances.*

Statement of Senator McClure, author of an earlier and similar amendment to the Payments In Lieu Of Taxes Act, supporting and explaining the Durenberger amendment. 129 Cong. Rec. S8444-45 (daily ed. June 15, 1983).

Mr. President, I support this amendment. It is a modification of the amendment which I offered in the committee that deals with the payment in lieu of taxes program.

The need for this amendment lies in the implementation of the original [Payments In Lieu Of Taxes Act] which was designed to provide revenues to that smallest unit of local government which provides general public services.

In the original administration of the act, the Department of the Interior wrote regulations and adopted definitions which resulted in the payments going to countries[sic] or their equivalents in almost every instance.

The townships in Michigan, among others, felt offended and brought suit. The court said that the regulations which had been adopted by the Department of the Interior were inappropriate. This cast a great deal of doubt on the payment in lieu of taxes program, and would have almost certainly meant that no further payments would have been made until that litigation was finally resolved. It would have also made a tremendous hiatus with respect to the status of payments that had been made under the program since the program began.

As the author of the PILT amendments in the first instance, I can say it was our intention that we create a stream of revenue that would act, in effect, as a substitute for the taxes that would have been generated upon property otherwise subject to taxation. That stream of revenues would go to the unit of government closest to that land that would have normally received those revenues under an ad valorem taxation scheme.

* * *

The amendment offered by the Senator from Minnesota solves that problem by saying that the State legislature must make that determination. If the State statute complies with the requirement that the lands be within the unit of government which provides that service and the revenues go to that unit of government which provides general public services in the areas where the lands are located, then the State will receive a lump sum payment. The State makes the distribution, and the State carries the administrative expense.

III. Text Of Final Amendment As Passed And Signed And Conference Committee Report

Amendment No. 89 to the Payments In Lieu Of Taxes Act adding new 31 U.S.C. § 6907 with conference committee report explanation. 129 Cong. Rec. H5367 (daily ed. July 2[illegible], 1983) (emphasis supplied):

(4) a new section 6907 is added as follows:

(a) Notwithstanding any other provision of this chapter, a State may enact legislation which requires that any payments which would be made to units of general local government pursuant to this chapter be reallocated and redistributed in whole or part to other smaller units of general purpose government which (1) are located within the boundaries of the larger unit of general local government, (2) provide general governmental services and (3) contain entitlement lands within their boundaries.

Such reallocation or redistribution shall generally reflect the level of services provided by, and the number of entitlement acres within, the smaller unit of general local government.

(b) Upon enactment of legislation by a State, described in subsection (a), the Secretary shall make one payment to such State equaling the aggregate amount of payments which he otherwise would have made to units of general local government within such State pursuant to this chapter. It shall be the responsibility of such State to make any further distribution of the payment pursuant to subsection (a).

Such redistribution shall be made within 30 days after receipt of such payment. No payment, or portion thereof, made by the Secretary shall be used by any State for the administration of this subsection or subsection (a).

(c) Appropriations made for payments in lieu of taxes for a fiscal year may be used to correct underpayments in the previous fiscal year to achieve equity among all qualified recipients.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

This amendment permits states, upon their enactment of legislation, to reallocate PILT payments to units of local governments which provide general governmental service and contain entitlement lands within their boundaries. It also permits appropriations to be used to correct underpayments made in the prior fiscal year.

* * *

Signed by the President on July 30, 1983, Pub.L. 98-63, 129 Cong. Rec. D1095 (daily ed. August 1, 1983).